

Remarks

The following remarks are submitted to be fully responsive to the final Official Action dated July 7, 2009. This response is thus timely submitted within the three-month shortened statutory period for response. Should any fees be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same. Reconsideration of all outstanding grounds of the rejection and allowance of the subject application are believed in order and respectfully requested.

Within the final Official Action, claims 1-10, 14-15, and 16-20 are again rejected under 35 U.S.C. 102(b) as being anticipated by Barbut et al. (US 5,769,816). Of these claims, please note that claims 16-2- have been previously canceled as noted above.

The Barbut reference is relied upon by the Examiner to reject independent claim 1 and dependent claims 2-7 and 14-15. Dependent claims 8-13 are noted as containing allowable subject matter is rewritten in independent form. The Examiner's indication of allowable subject matter is appreciated. It is submitted that independent claim 1 is also allowable over the prior art of record for at least the following reasons.

Claim 1 includes the recitation of a restriction element that is operatively provided to change a size of the selective opening so as to prevent debris passage back through said selective opening. Within the Office Action in response to Applicants' earlier arguments, the Examiner states that the size of the selective opening that is defined by the perimeter of the seal 317 is operatively changed by the changing of the device of the Barbut reference from its collapsed configuration to an expanded configuration as such is deployed. It is submitted that such a reading of the device of the Barbut reference does not anticipate claim 1. Also, it is submitted that the elements 316, as relied upon by the Examiner, do not operate to change an opening size, as is a required recitation related to the restriction elements of claim 1.

Claim 1 requires that the restriction element prevents debris back through said selective opening in said second direction of blood flow opposite to said first direction of blood flow such that said chamber entraps the filtered debris received therein for debris removal from the vascular system of the patient. The Barbut reference discloses structure that supports the screen material including holding strings 316 as are provided prior to the screen with respect to the direction of blood flow in the vessel. These strings 316 act equally to permit blood flow and debris the same in both directions.

Moreover, claim 1 characterizes that the restriction element of the present invention is operative to change the opening size of the selective opening so that debris as carried within the blood can go through in the first direction and not back in a second direction. As claimed, the selective opening is thusly changed its opening size by an operation of the restriction element. This is not the case with the strings 316 of the device of the Barbut reference.

The holding strings 316 are described at column 18, lines 5-11 of the Barbut reference as provided for connecting the end of the cannula 300 to the inflation seal 317. As can be seen in Figs. 6 and 7, if the holding strings 316 were not provided, the seal 317 would be movable along the cannula tube 350 as only then restricted by the connection at the rib 351. Such movability would render the mesh 318 ineffective. As such, the holding strings 316 are merely present in the expanded and deployed configuration of the seal 317 and mesh 318 by necessity to position the seal 317. The openings that are provided between such strings do not change in any way while the device is deployed. It is noted that the strings 316 might restrict a debris particle during backflow momentarily, but they do not act to change the opening or to close off any part of the opening that is provided between each string.

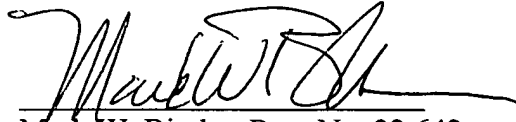
Claim 1 requires that the restriction element operatively change the size of the claimed selective opening. The holding strings do not operative to change an opening size. Even as they may temporarily hinder back flow of a particle, they do not operate to change an opening size. Moreover, the holding strings are not part of any operation that causes the device to collapse from the deployed and expanded shape. Removal of fluid supplied to the seal 317 allows it to collapse. The holding strings do not operate to change the opening size or the condition of the device from deployed to collapsed. Contrary to the Examiner's statement, the elements 316 are not operative to change the size of the selective opening defined by the

The Examiner's withdrawal of the obviousness-type double patenting rejection of record is also respectfully requested in light of Terminal Disclaimer that is concurrently filed as an attachment to this response.

Accordingly, it is submitted that presently pending claims 1-15 are currently in condition for allowance, a notice of which is earnestly solicited. If the Examiner finds any issue remaining after consideration of this response, the Examiner is invited to contact the undersigned, at the Examiner's convenience, in order to expedite any remaining prosecution.

Respectfully Submitted,

By:

A handwritten signature in black ink, appearing to read 'Mark W. Binder', written over a horizontal line.

Mark W. Binder, Reg. No. 32,642

Customer Number 33072

Phone: 651-275-9805

Facsimile: 651-351-2954

Dated: September 8, 2009

MWB/55297